

PETITIONER:
MANGAT MAL (DEAD) AND ANR.

Vs.

RESPONDENT:
SMT. PUNNI DEVI (DEAD) AND ORS.

DATE OF JUDGMENT 01/09/1995

BENCH:
M.K. MUKHERJEE, G.T. NANAVATI

ACT:

HEADNOTE:

JUDGMENT:

JUDGMENT

BHARUCHA, J.

This appeal by special leave impugns the judgment and order dated 8th May, 1970 of the High Court of Rajasthan. The issue in the appeal relates to the application of Section 14(1) of the Hindu Succession Act, 1956. It stands outside the line of cases decided by this Court in that it is argued that, in giving maintenance, provision for residence is not to be made.

One Karam Chand had two sons, Dhanraj and Askaran. Dhanraj died in 1891 leaving no issue. Askaran had two sons, Johri Mal and Bhikam Chand. In 1905 Johri Mal was taken in adoption by Dhanraj's widow. After the adoption of Johri Mal, Askaran and Bhikam Chand remained co-parceners until the death in 1911 of Bhikam Chand. Bhikam Chand left behind his wife Sukh Devi and a daughter. On 7th February, 1928, Askaran executed a will bequeathing his estate to Johri Mal. Sukh Devi, who had been living with her father-in-law Askaran, protested; being the widow of a co-parcener she was entitled to be maintained out of joint family property. An agreement was then entered into between Askaran and Sukh Devi. It was dated 26th June, 1934. It recited that Sukh Devi had been boarding and lodging with Askaran, and that family disputes had arisen. To put an end to the family disputes, Askaran and Sukh Devi, by the agreement, appointed one Mool Chand as arbitrator to "allot property and cost for executant number 2 for her life for residence and maintenance". The arbitrator Mool Chand entered upon the reference and made an award on 9th July, 1934. He set out the particulars of properties belonging to Askaran at Bidasar and Ladnu and gave the choice of selecting one to Sukh Devi to "reside till her life time in them or in it and she can use it in any way she likes. On necessity she will get its repairs done with her own money. She will have no right to sell, mortgage or transfer in any other way. After her death, the properties stated in Para No.1 or 2 (whichever she might take) will revert to Askaran, his heirs and legal representatives. Her right will be only in her lifetime. She is authorised to undertake construction for necessity and convenience. She may increase or decrease

apartments with her money. But she will not be authorised to destroy, deteriorate its usefulness and condition, etc.

(4) For the maintenance of Smt. Sukh Devi, I give my finding that it is better to give a lump sum instead of giving monthly or annually because she wants to receive money in lump sum. By giving lump sum, the disputes, which might arise from time to time at the time of demand and payment, might be avoided. Therefore I give my finding that Askaran will pay a sum of Rs.45,000/- (rupees forty five thousand only) to Smt. Sukh Devi for maintenance in case she accepts the house at Ladnu and in case she takes the house and the Nohra at Bidasar, she will be given Rs.37,000/- (rupees thirty seven thousand only). Since there is no apartment in the Nohra, Askaran will pay a sum of Rs. 1000/- (rupees one thousand only) more besides Rs.37,000/- (rupees thirty seven thousand only) for constructing Dhalia, room for keeping grass and fodder and a Hauz.....

(5) The money which will be given to her for maintenance will be her personal money and she can use it as she likes.....

(8) After the execution of the aforesaid terms, Askaran will be free from all kinds of litigations or compensation of Smt. Sukh Devi and she will have no right in the ancestral or personal properties of Askaran or his heirs or legal representatives. Further, Askaran, his heirs or legal representatives will also have no right in Smt. Sukh Devi's any property or her Shtridhan except noted in Para No.3....."

On 10th July, 1934, Sukh Devi executed a document wherein she stated that she had accepted the property at Bidasar under the terms of Mool Chand's award. She would "have right in the house and Nohra at Bidasar in the manner that I will go on residing in the said house at Bidasar till my life time and go on using the Nohra. I will keep the house and Nohra in my possession and use them in the manner I like and on necessity, I will get it repaired with my money. I will be authorised to effect minor changes etc. by way of construction for my convenience, but I will not be authorised to waste or damage the said Haveli and Nohra. After my death the house will again revert to Askaran, his surviving sons and grandsons or other heirs and successors or legal representatives. My heirs and successors or legal representative will have no right of possession or ownership over the said property.

(3) The arbitrator has allowed me Rs. 37,000/- in case I take the house and Nohra at Bidasar (Nohra with Rs. 1000/- for constructing rooms). I agree to take this amount for my maintenance etc. over which I will have absolute right.

(7) In the end it is clearly stated that now I shall have no concern of any kind in the movable and immovable properties and the cash of Askaran which might be existing in this state or in British India or at any other place.

Askaran died on 24th April, 1945.

Section 14 of the Hindu Succession Act, 1956, reads thus :

"Property of a female Hindu to be her absolute property - (1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation - In this sub-section, "property" includes both movable and immovable property acquired by a female

Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.

On 11th April, 1960, Sukh Devi executed sale deeds relating to the 'nohra' in the Bidasar property in favour of one Mangat Mal, in respect of its Western side, and one Trilok Chand, in respect of its Eastern side.

On 17th May, 1960, Johri Mal and his sons filed a suit challenging the validity of the sale. The vendees were made parties. The trial court dismissed the suit holding that Sukh Devi had become, by reason of the Act, the full owner of the property at Bidasar. The plaintiffs appealed to the High Court. The High Court took the view that the words "in lieu of maintenance" in the Explanation to Section 14 (1) applied to property specifically allotted to a widow for her maintenance while the words "or in any other manner whatsoever" covered specific property allotted to her for her residence. It held that Sukh Devi had not become the full owner of the property at Bidasar on the coming into force of the Act because she had only a restricted life-estate therein. The appeal was, accordingly, allowed. The sale deeds were held to be void and the plaintiffs to be entitled to possession of the nohra upon the death of Sukh Devi.

This appeal is by the vendees of the 'nohra', Mangat Mal and Trilok Chand.

Mr. Bagga, learned counsel for the appellants, submitted that Sukh Devi had a pre-existing right to maintenance and that under the award she was given a life interest in the Bidasar property along with a sum of Rs. 37,000/- in lieu of that right. She, therefore, acquired limited ownership of the Bidasar property under the award in 1934 and that limited ownership blossomed into full ownership on the coming into force of the Act.

Mr. Thakur, learned counsel for the respondents, submitted that, for the application of Section 14(1) it was requisite that the property should have been 'acquired' and that the acquisition was of ownership rights comparable to those of a limited estate holder under the old Hindu law. Since Sukh Devi had been conceded only the right of residence in the Bidasar property, she had not acquired any right thereto. Hence, Section 14 (1) did not apply. The use of the two expressions "limited owner" and "full owner" in Section 14 (1) presupposed the existence of a limited ownership right before the same could be converted into full ownership. The modes of acquisition contemplated in the Explanation to Section 14 (1) suggested that it was the right of ownership which was insisted upon. A right in the

nature of a right of residence could not be equated with a right of ownership. Even during the life time of Sukh Devi, the reversioners, to whom the Bidasar property belonged as legatees under Askaran's will, could create a mortgage thereof without her permission because they continued to be the owners of Bidasar property. The concession in the award of the right of residence in the Bidasar property to Sukh Devi was over and above the provision for maintenance in terms of money. Even if it were to be held that the award conferred a title to the property for the purposes of Section 14 (1), it did not come from any pre-existing right.

In the leading case on the subject of section 14, V. Tulasamma & ors. vs. V. Sesha Reddi (Dead) by L.Rs., 1977-3 S.C.R. 261, it was held that under the Sastric Hindu Law a Hindu widow had a right to be maintained out of joint family property and this right ripened into a charge if the widow took the necessary steps for having her maintenance ascertained and specifically charged on the joint family property. Even if no specific charge were created, this right was enforceable against joint family property in the hands of a volunteer or a purchaser taking it with notice of her claim. When specific property was allotted to the widow in lieu of her claim for maintenance, the allotment was in satisfaction of her right to be maintained out of the joint family property. It was not a grant for the first time without any pre-existing right in the widow. The widow got the property by virtue of her pre-existing right, the instrument giving the property being merely a document effectuating such pre-existing right. Section 14 (1) was large in its amplitude and covered every kind of acquisition of property by a female Hindu including acquisition in lieu of maintenance. Where such property was possessed by her at the date of commencement of the Act, she became its full owner. The words "any property" were large enough to cover any and every kind of property but in order to expand the reach and ambit of the Section and make it all comprehensive the Explanation thereto had been enacted. Whatever be the kind of property, movable or immovable, and whichever be the mode of acquisition, it would be covered by Section 14 (1). The object of the Legislature was to wipe out the disabilities from which a Hindu woman suffered in regard to the ownership of property under the old Sastric Law and to recognise her status as an independent and absolute owner of property. Sub-section (2) of Section 14 was in the nature of a proviso to sub-section (1). It had to be read in the context to sub-section (1) to leave as large a scope for the operation of sub-section (1) as possible. So read, sub-section (2) had to be confined to cases where property was acquired by a Hindu woman without any pre-existing right for the first time under a gift, will, instrument, decree, order or award, the terms of which prescribed a restricted estate in the property. Where property was acquired by a Hindu woman in lieu of her right to maintenance it was by virtue of a pre-existing right and such acquisition was not within the scope and ambit of sub-section (2) even if the instrument allotting the property prescribed a restricted estate in it. Where property was acquired by a Hindu woman under an instrument by virtue of a pre-existing right to maintenance and, under the law as it stood prior to the enactment of the Act, she would have had no more than a limited interest in the property, a provision in the instrument giving her limited interest in the property was merely by way of recognition of the legal position as it existed and the restriction on her interest, being a disability imposed by law, was wiped out and her limited

interest enlarged under sub-section (1).

In Smt. Gulwant Kaur and anr. vs. Mohinder Singh and ors., 1987-3 S.C.R. 576, it was argued that even if the land in question had been given to the appellant in lieu of maintenance, it had to be established that what was given to her was a limited estate in the sense of ownership without the right of alienation and that under Section 14 of the Act only such a limited estate would blossom into her absolute estate. This Court rejected the argument. It said that it was obvious that Section 14 was aimed at removing restrictions or limitation on the right of a Hindu woman to enjoy, as a full owner, property possessed by her so long as her possession was traceable to a lawful origin, that is to say, if she had a vestige of a title. It made no difference whether the property was acquired by inheritance or devise or at a partition or in lieu of maintenance or arrears of maintenance or by gift or by her own skill or exertion or by purchase or by prescription or in any other manner whatsoever. The Explanation to Section 14 (1) expressly referred to property acquired in lieu of maintenance and the Court could not see what further title the widow was required to establish before she could claim full ownership under Section 14 (1) in respect of property given to her and possessed by her in lieu of maintenance. The very right to receive maintenance was sufficient title to enable the ripening of possession into full ownership if she was in possession of the property in lieu of maintenance. The Court added that it did not understand that in the case of Bai Vajia vs. Thakorbhai Chelabhai, 1979-3 S.C.R. 291, it had been laid down that what was enlarged by Section 14 (1) into a full estate was the Hindu woman's estate known to Hindu law. When the Court had used the words "limited estate", they were used to connote a right in the property to which the possession of the Hindu woman could legitimately be traced, but it was not a full right of ownership. If a Hindu woman was put in possession of property pursuant to or in recognition of a right to maintenance, it could not be denied that she had acquired a limited right or interest in the property and once that position was accepted it followed that the right got enlarged to full ownership under Section 14 (1).

The property acquired by a Hindu widow under an award for partition of her late husband's estate was the subject-matter of the decision of this Court in Badri Pershad vs. Smt. Kanso Devi, 1970-2 S.C.R. 95. The word "acquired" in Section 14 (1) had, the Court said, to be given the widest possible meaning. This was so because of the language of the Explanation which made sub-section (1) applicable to acquisition of property by inheritance or devise or at a partition or in lieu of maintenance or arrears of maintenance or by gift or by a female's own skill or exertion or by purchase or prescription or in any mannere whatsoever. Sub-section (2) of section 14 was more in the nature of a proviso to sub-section (1). It could come into operation only if acquisition by any of the methods indicated therein was made for the first time without there being any pre-existing right in the Hindu woman who was in possession of the property. The mere fact that there had been a partition by means of arbitration which resulted in an award and a decree based on it did not bring the matter within sub-section (2) as the provisions of sub-section (1) became fully applicable in view of the terms of the Explanation.

Mr. Thakur drew our attention to Eramma vs. Veerupana and ors., 1966-2 S.C.R. 626, and he emphasised a passage

which reads thus :

"(7) It is true that the appellant was in possession of Eran Gowda's properties but that fact alone is not sufficient to attract the operation of S.14. The property possessed by a female Hindu, as contemplated in the section is clearly property to which she has acquired some kind of title whether before or after the commencement of the Act. It may be noticed that the Explanation to S.14 (1) sets out the various modes of acquisition of the property by a female Hindu and indicates that the section applies only to property to which the female Hindu has acquired some kind of title, however restricted the nature of her interest may be. The words "as full owner thereof and not as a limited owner" as given in the last portion of sub-section (1) of S. 14 clearly suggest that the legislature intended that the limited ownership of a Hindu female should be changed into full ownership. In other words, S.14 (1) of the Act contemplates that a Hindu female who, in the absence of this provision, would have been limited owner of the property, will now become full owner of the same by virtue of this section. The object of the section is to extinguish the estate called 'limited estate' or 'widow's estate' in Hindu Law and to make a Hindu woman, who under the old law would have been only a limited owner a full owner of the property will all powers of disposition and to make the estate heritable by her own heirs and not revertible to the heirs of the last male holder. The Explanation to sub-section (2) of S. 14 also refers to acquisition of property. It is true that the Explanation has not given any exhaustive connotation of the word "property" but the word 'acquired' used in the Explanation and also in sub-section (2) of S. 14 clearly indicates that the object of the section is to make a Hindu female a full owner of the property which she has already acquired or which she acquires after the enforcement of the Act. It does not in any way confer a title on the female Hindu where she did not in fact possess any vestige or title. It follows, therefore, that the section cannot be interpreted so as to validate the illegal confer any title on a mere trespasser. In other words, the provisions of Section 14 (1) of the Act cannot be attracted in the case of a Hindu female who is in possession of the property of the last male holder on the date of the commencement of the Act when she is only a trespasser without any

right to property."

It is difficult to see how this judgment can assist the respondents' case. The Court did not intend to mean that the object of Section 14 was only to extinguish the estate called 'limited estate' or 'widow's estate' under the Hindu Law. That is clear from the passage quoted when it refers to "some kind of title" and "any vestige of title". It is clear also from what the Court held in the last sentence quoted above, namely, that the provisions of Section 14 (1) are not attracted in the case of a Hindu woman who is in possession of property only as a trespasser and without any right thereto.

The next case which Mr. Thakur cited was Mangal Singh and ors. vs. Smt. Rattno (dead). 1967-3 S.C.R. 454. Mr. Thakur stressed that it was there stated that the expression "possessed by" in Section 14 (1) was not intended to apply to a case of mere possession without title and the Legislature intended this provision for cases where the Hindu woman possessed a right of ownership in the property in question. In paragraph 9 of the same judgment the Court said that it appeared that the relevant date on which the Hindu woman should be possessed of the property in dispute should be the date on which the question of applying the provisions of Section 14 (1) arose. If, on that date, when the provisions of this Section were sought to be applied, the property was possessed by a Hindu woman, it would be held that she was full owner of it and not merely a limited owner.

The next judgment upon which Mr. Thakur placed reliance was that of this Court in Bai Vajia vs. Thakorbhai Chelabhai, 1979-3 S.C.R. 291, to which reference has already been made. It was pointed out that the Court had said that a plain reading of Section 14 (1) made it clear that the concerned Hindu woman should have limited ownership in the property, which limited ownership would get enlarged by the operation of that sub-section. It was not intended to enlarge any sort of a right which in no sense could be described as ownership. The expression "and not as a limited owner" would, then, not have been used at all. Now, in this case it was also said that limited ownership in the Hindu woman was a sine qua non for the applicability of Section 14 (1) and this requirement stood fully satisfied in the case of a widow to whom property was made over in lieu of maintenance with full rights of enjoyment thereof minus the power of alienation. These were precisely the incidents of limited ownership. It was also said that the enactment of Section 14 was a step in the direction of practical recognition of the equality of the sexes and was meant to elevate woman from a subservient position in the economic field to a pedestal where they could exercise full power of enjoyment and disposal of property held by them as owners, untrammelled by artificial limitations placed on their rights of ownership by a society in which the will of the dominant male prevailed to bring about a subjugation of the opposite sex. It was also a step calculated to ensure uniformity in the law relating to the nature of ownership of 'stridhana'. This dual purpose underlying the Explanation to Section 14 (1) had to be borne in mind and given effect to when the section was subjected to analysis and interpretation and sub-section (2) was not to be given a meaning which would defeat that purpose and negative the legislative intent, if the language used so warranted. A combined reading of the two sub-sections and the Explanation left no room for doubt that sub-sections (2) did not operate to take in property acquired by a Hindu woman in lieu of

maintenance or arrears of maintenance (which was property specifically included in the enumeration contained in the Explanation) out of the purview of sub-section (1).

The reference made by Askaran and Sukh Devi to the arbitration of Mool Chand records that Sukh Devi was the widow of Askaran's son and had been boarding and lodging with Askaran. Family disputes had made the continuance of joint lodging and boarding impossible and Mool Chand was appointed arbitrator "to allot property and cost" to Sukh Devi "for her life for residence and maintenance". There was, therefore, clearly, recognition of Sukh Devi's pre-existing right to maintenance. The award that Mool Chand made gave Sukh Devi an alternative in respect of the property in which she desired to reside, one at Bidasar and one at Ladnu. The award stated that if she chose the property at Ladnu she would receive Rs. 45,000/- in addition, and if she chose the property at Bidasar she would receive Rs. 37,000/- in addition (as also Rs. 1,000/- for constructing certain apartments). The award entitled Sukh Devi to use the property she chose for residence for life and "she can use in any way she likes". She was entitled to undertake construction for necessity and convenience, to increase and decrease apartments with her money and to get repairs done. The only limitation was that she should not destroy or damage the property. Sukh Devi chose the property at Bidasar for residence and in the deed she executed in that behalf she stated that she would "keep the house and Nohra in my possession and use them in the manner I like".

In our view, on a perusal of the terms of reference, the award and the document executed by Sukh Devi indicating her preference for the Bidasar property, there is no doubt that Sukh Devi acquired the Bidasar property and the sum of Rs. 38,000/- in lieu of her pre-existing right to maintenance. That the award of the property and the money was linked is clear from the fact that the quantum of the money depended upon whether Sukh Devi chose the Bidasar property or the Ladnu property. The award of both property and money was in lieu of her pre-existing right to maintenance.

Maintenance, as we see it, necessarily must encompass a provision for residence. Maintenance is given so that the lady can live in the manner, more or less, to which she was accustomed. The concept of maintenance must, therefore, include provision for food and clothing and the like and take into account the basic need of a roof over the head. Provision for residence may be made either by giving a lump sum in money, or property in lieu thereof. It may also be made by providing, for the course of the lady's life, a residence and money for other necessary expenditure. Where provision is made in this manner, by giving a life interest in property for the purposes of residence, that provision is made in lieu of a pre-existing right to maintenance and the Hindu lady acquires far more than the vestige of title which is deemed sufficient to attract Section 14 (1).

We are supported in the view that we take by Mulla's Hindu Law (Sixteenth Edition) which sets out the position in law prior to the Act. The Manager of a joint Mitakshara family is under a legal obligation to maintain all male members of the family, their wives and their children. On the death of any one of the male members he is bound to maintain his widow and his children. The obligation to maintain these persons arises from the fact that the Manager is in possession of the family property (para 543). An heir is legally bound to provide, out of the estate which

descends to him, maintenance for those persons whom the late proprietor was legally or morally bound to maintain (para 544). A wife is entitled to be maintained by her husband, whether he possesses property or not. When a man with his eyes open marries a girl accustomed to a certain style of living, he undertakes the obligation of maintaining her in that style (para 554). A widow who does not succeed to the estate of her husband as his heir is entitled to maintenance out of his separate property as well as out of property in which he was a co-parcener at the time of his death (para 559). A Hindu widow is, in the absence of special circumstances, entitled to reside in the family dwelling house in which she lived with her husband (para 562). The maintenance to be allowed to a widow should be such an amount as will enable her to live consistently with her position as a widow, with the same degree comfort and reasonable luxury as she had in her husband's house, unless there are circumstances which affect, one way or the other, her mode of living there. In determining the amount of maintenance the Court should have regard, inter alia, to the provision and status of the deceased husband and of the widow and the reasonable wants of the widow, including not only the ordinary expenses of living, but what she might reasonably expend for religious and other duties incidental to her station in life (para 566). Where an undivided family consists of two or more males, related as father and son or otherwise, and one of them dies leaving a widow, she is entitled to reside in the family dwelling house in which she lived with her husband. If the house is sold by the surviving coparceners without necessity, the sale does not affect her right, and the purchaser cannot evict her until another suitable residence is found for her (para 573). A widow who is entitled to maintenance may sue, inter alia, for a charge on a specific portion of her husband's estate for her maintenance and residence (para 579).

The Hindu Adoption & Maintenance Act, 1959, was enacted to amend and codify the law relating to adoptions and maintenance among Hindus, and it defines maintenance in Section 3 (d) to include "(1) in all cases, provision for food, clothing, residence, education and medical attendance and treatment." (Emphasis supplied.)

Under the award provision was made, in lieu of Sukh Devi's pre-existing right to maintenance, of money and interest for life in the Bidasar property. Sukh Devi, therefore, acquired limited ownership rights in the Bidasar property in recognition of her pre-existing right to maintenance. Upon the coming into force of the Act the limited rights acquired by Sukh Devi in 1934 blossomed into full ownership of the Bidasar property, and she became entitled to sell its 'nohra'. In our view, therefore, the High Court was in error in the view that it took.

The appeal is allowed. The judgment and order under appeal is set aside and the judgment and order of the Sr. Civil Judge, Churu is restored.

In the facts and circumstances of the case, there shall be no order as to costs.